

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 157 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VIJAYMAHAL HOTELS PVT LTD

Versus

REGIONAL PROVIDENT FUND COMMISSIONER

Appearance:

MR RP BHATT for Petitioner

Mr.J.D. Ajmera, learned Standing Counsel for the respondents.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 01/10/96

ORAL JUDGEMENT :

This petition under Article 226 of the Constitution challenges the communication dated 18th December 1984 (Annexure 'C' to the petition) issued by the Regional Provident Fund Commissioner, Gujarat State and the show cause notice dated 4th January 1985 (Annexure 'D' to the petition) issued by the Assistant Provident Fund Commissioner, Gujarat State, in respect of

the liability for contributing to Provident Fund for employees employed at Messrs Vijay Mahal Hotels Pvt. Ltd., at Goknath and at Nilambagh Palace Hotels.

2. Mr.J.D. Ajmera, learned Standing Counsel for the respondents has contended that since the impugned notice at Annexure 'D' is merely a show cause notice, the petition is premature and deserves to be dismissed on that ground. Mrs.M.M. Bhatt, learned counsel for the petitioner, on the other hand, has submitted that although Annexure 'D' purports to be a show cause notice, for all practical purposes the respondents have decided the issue by sending communication dated 18th December 1984 (Annexure 'C' to the petition), because the tenor of the said communication indicates that the respondents had already taken the decision and therefore, had even called upon the petitioner to start compliance as per instructions given vide respondent's letter dated 25th August 1984. Leaned counsel for the petitioner has submitted that the said instructions dated 25.8.1984 as well as the impugned communication dated 18.12.1984 were issued without giving the petitioner reasonable opportunity of being heard.

3. In response to the above Mr.Ajmera, learned Standing Counsel has fairly stated that the instructions dated 25.8.1984 referred to in the said letter as well as communication dated 18.12.1984, Annexure 'C' to the petition - both are tentative opinions and that the respondents have not taken any decision in the matter and the impugned notice dated 4.1.1985 was issued for the purpose of enabling the petitioner to show cause as to why the petitioner should not be fastened with the liability under the Act.

4. Having heard the learned counsel for the parties, it appears that the petition need not be entertained at this stage as the respondents have not taken any final decision in the matter. It is made clear that the instructions dated 25.8.1984 and and communication dated 18.12.1984, Annexure 'C' to the petition were merely tentative opinions in the nature of advisory communication and that the respondents shall hereafter take appropriate decision in accordance with law. After hearing the petitioner. The respondents are, therefore, directed to treat the aforesaid instructions dated 25.8.1984 and the communication dated 18.12.1984 as tentative opinion and shall take final decision in accordance with law after giving the petitioners reasonable opportunity of being heard.

5. Subject to the aforesaid clarification and direction, the petition is accordingly disposed of. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

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